

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PETER M. STARK,
ANTHONY DIAZ,
JAMES STENGER, as Trustees of the Preferred
Manufacturers Insurance Trust Fund, and
THE PREFERRED MANUFACTURERS INSURANCE
TRUST FUND,

Plaintiffs,

v.

**REPORT
and
RECOMMENDATION**

09-CV-78A(F)

NATIONAL REINSURANCE CORPORATION,
REPUBLIC WESTERN INSURANCE COMPANY,

Defendants.

In this removal action, by oral order entered following a Rule 16(b) pretrial conference with the parties on August 25, 2009, Defendants were directed to show cause why the matter, an action seeking declaratory judgment, should not be remanded to New York Supreme Court on the ground that the complaint fails to establish the amount in controversy exceeds \$75,000 and that therefore subject matter jurisdiction is lacking in this court under 28 U.S.C. § 1332(a) ("Order to Show Cause") (Doc. No. 32). Plaintiff was directed to file its reply within 10 days after Defendants' response.

By letters dated September 16, 2009, (Doc. No. 33), Defendants advised they had no opposition to the Order to Show Cause. To date, Plaintiff has not responded.

CONCLUSION

Based on the foregoing, the matter should be REMANDED to New York

Supreme Court, Erie County, and the Clerk of Court directed to close the file.

Respectfully submitted,

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: April 7, 2010
Buffalo, New York

Pursuant to 28 U.S.C. §636(b)(1), it is hereby
ORDERED that this Report and Recommendation be filed with the Clerk of the
Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the
Clerk of the Court within fourteen (14) days of service of this Report and
Recommendation in accordance with the above statute, Rules 72(b), 6(a) and 6(e) of
the Federal Rules of Civil Procedure and Local Rule 72.3.

**Failure to file objections within the specified time or to request an
extension of such time waives the right to appeal the District Court's Order.**

Thomas v. Arn, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human
Services*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Limited*, 838 F.2d 55 (2d
Cir. 1988).

Let the Clerk send a copy of this Report and Recommendation to the attorneys
for the Plaintiffs and the Defendants.

SO ORDERED.

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: April ___, 2010
Buffalo, New York